

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GARY ERVIN,

NO. CIV. S-05-269 LKK/GGH PS

Plaintiff,

v.

O R D E R

JUDICIAL COUNCIL OF CA,  
et al.,

Defendants.

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The court is in receipt of plaintiff's motion, entitled "Motion for relief under FRCP 52(b) and 60(b)". It is currently set to be heard on the December 1, 2006 law and motion calendar. The court decides the matter based on the papers and without oral argument.

Plaintiff originally filed his complaint in the Northern District of California on November 22, 2004, alleging violations of Title II of the Americans With Disabilities Act ("ADA") as to all defendants, and conversion as to defendant Castellanos. On

1 February 7, 2005, the Northern District transferred the action to  
2 this court.<sup>1</sup>

3 On June 26, 2006, the magistrate judge assigned to the case  
4 filed findings and recommendations. Plaintiff filed objections on  
5 July 14, 2006, and July 17, 2006, and they were considered by this  
6 court. On September 11, 2006, the findings and recommendations  
7 were adopted by this court. Accordingly, the motion to dismiss by  
8 defendants Virga, Cecil, McMaster, and Castellanos, was dismissed  
9 as moot (because a dismissal had already been ordered), defendants  
10 Judicial Counsel and Superior Court of California, County of  
11 Sacramento, were dismissed with prejudice, and this action was  
12 terminated. Plaintiff now seeks to have the court reconsider or  
13 vacate its prior ruling pursuant to Federal Rules of Civil  
14 Procedure 52 (b) and 60 (b).

15 Federal Rules of Civil Procedure 52 (b) provides that "[o]n  
16 a party's motion filed no later than 10 days after entry of  
17 judgment, the court may amend its findings - or make additional  
18 findings - and may amend the judgment accordingly." Fed. R. Civ.

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20 <sup>1</sup> As explained in the findings and recommendations, plaintiff  
21 is a non-practicing attorney with electro-impulse cardiovascular  
22 disease and congenital heart murmur arrhythmia, who alleges that  
23 these disorders substantially limit major life activities such as  
24 hearing, speaking, walking, and performing manual tasks. He sued  
25 the Judicial Council, Superior Court in Sacramento County, four  
26 judges assigned to that bench, and the State Bar. Most of the  
allegations concerned prior lawsuits plaintiff was involved in  
which were litigated in that court. He complained of various  
actions by the judges in handling his cases which he alleges  
violated his rights under the ADA. As for the State Bar,  
plaintiff claimed that his status as "not entitled" to practice  
implies that he is insane, and violates the ADA. Plaintiff sought  
damages, and declaratory and injunctive relief.

1 P. 52(b). Judgment was entered in this case on September 12, 2006.  
2 Under Rule 52(b), a party has ten days to file a motion pursuant  
3 to the rule. Plaintiff filed the pending motion on September 26,  
4 2006 - fourteen days after judgment was entered. Plaintiff,  
5 therefore, failed to file his Rule 52 motion in accordance with the  
6 time limits set forth in Rule 52(b).

7 Federal Rule of Civil Procedure 60(b) provides that on "motion  
8 and upon such terms as are just, the court may relieve a party .  
9 . . from a final judgment . . . for . . . . any reason justifying  
10 relief from the operation of the judgment. . . ." Fed. R. Civ. P.  
11 60(b)(6). This catch-all provision of Rule 60(b) "vests power in  
12 courts adequate to enable them to vacate judgments whenever such  
13 action is appropriate to accomplish justice." Klapprott v. United  
14 States, 335 U.S. 601, 615 (1949). Nonetheless, in order to seek  
15 relief under Rule 60(b)(6), the movant must demonstrate  
16 "extraordinary circumstances." Liljeberg v. Health Services  
17 Acquisition Corp., 486 U.S. 847 (1988) (quoting Ackermann v. United  
18 States, 340 U.S. 193, 199 (1950)).


19 Plaintiff has failed to demonstrate the existence of  
20 "extraordinary circumstances" which would justify vacating the  
21 court's prior ruling. Plaintiff states that the "transferor  
22 Court's complex transfer order was issued by a District Judge -  
23 Jenkins. Such complex transfer order is an extra-ordinary  
24 circumstance." Pl.'s Mot. for Relief at 5. Plaintiff fails to  
25 explain what he means by this statement or how the transfer order  
26 was, in fact, such an extraordinary circumstance that it would

1 warrant this court vacating its prior decision. Moreover, the  
2 court notes that the findings and recommendations issued on June  
3 26, 2006 addressed the issue of how and why the case was  
4 transferred.

5 For these reasons, plaintiff's motion is DENIED. The hearing  
6 set for December 1, 2006 is accordingly VACATED.

7 IT IS SO ORDERED.

8 DATED: November 16, 2006.

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12 LAWRENCE K. KARLTON  
13 SENIOR JUDGE  
14 UNITED STATES DISTRICT COURT  
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